

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Union Pacific Railroad Company,
1400 Douglas Street, Stop 1580
Omaha, Nebraska 68179-1580

California Hazardous Waste
Transporter No. 3559,

and ECDC,

Respondents.

Docket: 02-01-940390 & 02-01-940348

CONSENT ORDER

Health and Safety Code
Section 25187

The State of California Department of Toxic Substances Control ("DTSC" or "Department") and respondents Union Pacific Railroad Company ("Union Pacific") and ECDC (collectively, "Respondents") enter into this Consent Order and agree as follows:

1. California law provides that "it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes unless the person holds a valid registration issued by the department, and it is unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issue by the department [of toxic substances control]." (Cal. Health & Saf. Code § 25163(a)(1).)

2. Regulations promulgated by DTSC provide that "[a] transporter shall not transport hazardous waste . . . without being registered with the Department" (Cal. Code Regs., tit. 22, § 66263.41(a)), and shall not transport hazardous wastes "without first receiving an Identification Number and a registration certificate from the Department." (Cal. Code Regs., tit. 22, § 66263.17(a).)

3. Union Pacific, a Delaware corporation doing business in California, was registered with the Department as a transporter of hazardous wastes prior to April 1, 2000.

4. Union Pacific was not registered with the Department as a transporter of hazardous wastes from April 1, 2000 through September 29, 2001.

5. Upon notification by the Department of its registration lapse, Union Pacific renewed its registration on September 30, 2001.

6. The Department alleges that Union Pacific transported RCRA and non-RCRA hazardous wastes by rail through or within California on multiple occasions during the period of its lapsed transporter registration.

7. ECDC transferred custody of hazardous wastes to Union Pacific for transportation through or within California on multiple occasions during the period of Union Pacific's lapsed registration.

8. The Department alleges that Union Pacific violated California Health & Safety Code section 25163(a)(1), and California Code of Regulations, title 22, sections 66263.41(a) and 66263.17(a), by transporting hazardous wastes through or within California without a valid DTSC registration.

9. The Department alleges that ECDC violated California Health & Safety Code section 25163(a)(1) by transferring custody of a hazardous waste to a transporter (Union Pacific) who did not hold a valid registration issued by the department at the time of transfer.

10. Each day on which hazardous wastes are transported without a valid transporter registration, and each day on which custody of wastes is transferred to an unregistered transporter, constitutes a separate violation. (Cal. Code Regs., tit. 22, § 66272.65.)

11. Respondents waive any right to a hearing in this matter.

12. The Department and Union Pacific have productively discussed means to reduce the burden of manifesting for rail shipments of hazardous waste.

13. The parties disagree as to the relationship between California law and federal law regarding hazardous waste transporter registration, and therefore, whether the alleged acts constitute violations of law. The parties preserve their respective rights to argue in the future concerning the preemptive effect, or lack thereof, of federal law on California statutes and regulations governing hazardous waste transporter registration.

14. This Consent Order and Union Pacific's payment(s) pursuant to Paragraph 16 below shall constitute full settlement of any dispute over Respondents' violations alleged above, and of any dispute over Waste By Rail, Inc.'s and/or Waste Solutions Group's transfer of wastes to Union Pacific for transportation to ECDC during the period of Union Pacific's allegedly lapsed registration. This Consent Order does not preclude the Department from taking enforcement action concerning other violations by either Respondent, or by Waste By Rail, Inc., or Waste Solutions Group, that are not referred to in this Order.

15. The parties agree that this Consent Order is issued pursuant to Health and Safety Code section 25187(a)(1).

16. Nothing in this Consent Order or in Union Pacific's payments hereunder are an admission by Respondents with regard to the violations alleged by the Department.

PAYMENTS

17. Within 45 days of the effective date of this Consent Order, Union Pacific shall pay the Department a total of fifty-five thousand dollars (\$55,000), of which \$27,500 shall constitute a civil penalty, and \$27,500 shall constitute reimbursement of DTSC's investigative and administrative costs.

18. Union Pacific's check(s) shall identify the name and docket numbers of this matter, shall be made payable to the "Department of Toxic Substances Control," and shall be delivered to:

Attn: John Goodykoontz
Accounting Office
DTSC
1001 "I" Street, 21st fl.
P.O. Box 806
Sacramento, CA 95812-0806

A photocopy of the check(s) shall be sent to each of the following:

Richard Stewart
Task Force Support and Special Investigations Branch
DTSC
700 Heinz Ave., Suite 210
Berkeley, CA 94710-2721

Nancy Long
Office of Legal Counsel
DTSC
1001 "I" Street, 21st fl.
P.O. Box 806
Sacramento, CA 95812-0806

Claudia Polsky
Office of the Attorney General
California Dept. of Justice
P.O. Box 70550
Oakland, CA 94612-0550

If Union Pacific fails to make payment as provided above, it agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1, and to pay all costs incurred

by the Department in pursuing collection, including attorney's fees.

OTHER PROVISIONS

19. Additional Enforcement Action: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

20. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondents to civil penalties and/or punitive damages for any costs incurred by the Department or other governmental agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

21. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

22. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except with the written consent of the parties.

23. Counterparts: This Consent Order may be executed in counterparts.

Dated: 9-12-05

Original Signed by
Lawrence E. Wzorek,
Assistant Vice President Law,
Union Pacific Railroad Company

Dated: 9-12-05

Original Signed by
Kory Coleman, Vice President,
ECDC Environmental, LLC

Dated: 9-15-05

Original Signed by
Stephen Sterling, Branch Chief
Task Force Support and
Special Investigations Branch
Department of Toxic Substances Control